October 1, 2003

Mr. Joe Karkoski
Central Valley RWQCB
3443 Routier Road, Suite A
Sacramento, CA 95827

Re: Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for The Control of Orchard Pesticide Runoff and Diazinon Runoff into the Sacramento and Feather Rivers

Dear Mr. Karkoski:

Thank you for providing the opportunity to submit comments on this important regulatory action. We appreciate your ongoing willingness to consider and discuss the concerns of the municipal stormwater regulated community during the development of this Basin Plan Amendment.

In particular, we appreciate the inclusion of language referring to the maximum extent practicable ("MEP") requirement contained in municipal stormwater permits, the postponement of the date for full compliance to June 30, 2008, and the inclusion of the provision for review of the allocations and provisions no later than June 30, 2007. We do have some continued concerns, as detailed below.

I. NPDES-permitted dischargers should be considered to be in compliance with the waste load allocations when the diazinon water quality objectives are met in the rivers.

This is the most significant issue affecting the Sacramento NPDES Stormwater Permittees and NPDES-permitted dischargers in general.

The Staff Report clearly establishes that the primary sources of diazinon in the main stem rivers are orchard discharges. The TMDL and Basin Plan Amendment are both focused on control of orchard discharges. The same documents clearly establish that NPDES-permitted discharges are de minimus sources of diazinon in the main stem rivers.

Current levels of diazinon in municipal stormwater discharges routinely exceed the proposed water quality objectives in the draft Basin Plan Amendment. Under current conditions, the stormwater NPDES Permittees would routinely exceed the "Waste load allocations" in the Basin Plan Amendment, as the proposed allocations are set equal to the proposed diazinon water quality objectives. This is an unreasonably stringent requirement for discharges that are not considered to be significant sources of diazinon.

The net result in the most likely scenario is that NPDES-permitted stormwater discharges would not comply with the proposed waste load allocations, even while the rivers will be in compliance with the proposed water quality objectives.

The Staff Report presumes that diazinon concentrations in municipal stormwater discharges will decrease substantially due to the pending federal ban on many urban uses of diazinon. This ban, due to take effect in 2004, may be effective in reducing diazinon in urban runoff, but the actual effect of the ban will not be known for some time. In the meantime, cities in the Central Valley are at risk of non-compliance.

Requested Action: Provisions 3 and 4 of Chapter IV, Implementation, pertaining to Orchard Pesticide Runoff and Diazinon Runoff, should be amended to state that "**NPDES-permitted dischargers will be considered to be in compliance with the waste load allocations when the diazinon water quality objectives are met in the river reaches specified in Table III-2A**."

II. The proposed Waste Load Allocations for NPDES-permitted dischargers are overly stringent, and should be modified.

As stated above, NPDES-permitted discharges are demonstrated in the Staff Report to be de minimus sources of diazinon in the main stem rivers. At the same time, the proposed Amendment assigns NPDES dischargers stringent waste load allocations, equal to the proposed diazinon water quality objectives. This provision effectively establishes end-of-pipe concentration limits for all NPDES-permitted dischargers, equal to the water quality objectives.

This overly-restrictive requirement is not necessary either to achieve the TMDL target or to meet the proposed diazinon water quality objectives in the rivers. Clearly the rivers provide substantial dilution for the NPDES-permitted discharges, as the measured levels of diazinon have generally been below the proposed water quality objectives in recent years, in spite of the fact that municipal stormwater discharges are routinely higher than the river objectives. The orchard pesticide runoff control program mandated by the Basin Plan Amendment is expected to further reduce river concentrations of diazinon.

Because stormwater discharge concentrations are highly variable, due to variations in hydrological conditions, a mass loading is preferred as a means of establishing and monitoring discharge loadings.

Requested Action: Provision 4 of Chapter IV, Implementation, pertaining to Orchard Pesticide Runoff and Diazinon Runoff, should be amended to state that **"the waste load allocations for municipal stormwater NPDES-permitted dischargers shall be set to a per-event loading equal to the 95th percentile diazinon concentration, as measured during wet weather events during 1998-2003, times the event runoff flow".**

III. The waste load allocations should defer to existing NPDES permit provisions.

The Sacramento NPDES permit requires the Permittees to implement a pesticide toxicity control plan ("Pesticide Plan", Provision 14b.). The Sacramento Stormwater Permittees are in the process of complying with this permit provision, and have been proactively engaged in pesticide control efforts for several years.

The Sacramento NPDES permit also requires the Permittees to reduce discharges of pollutants to the maximum extent practicable ("MEP"). This requirement entails an iterative process of identifying and controlling sources of pollutants. Again, the Permittees have been proactively engaged in this process for many years.

The most recent version of Provision 4 of Chapter IV, Implementation, pertaining to Orchard Pesticide Runoff and Diazinon Runoff, mentions consideration of the permit's MEP requirement, but does not specify how this consideration will be applied.

Requested Action: Provision 4 of Chapter IV, Implementation, pertaining to Orchard Pesticide Runoff and Diazinon Runoff, should be modified to state that, **"Municipal Stormwater NPDES Permit-holders shall be considered to be in compliance with these waste load allocations provided that they have demonstrated compliance with the NPDES permit requirement to control pollutant discharges to the maximum extent practicable, and are in compliance with any applicable permit provisions requiring control of pesticide discharges".**

IV. Adoption of DF&G Criteria as Water Quality Objectives Needs Further Study

The adoption of the proposed diazinon water quality objectives may have far-reaching economic and social consequences, including potentially unintended consequences for municipalities in the Central Valley. Additional review and revision of the proposed objectives is appropriate.

Requested Action: The proposed revisions to Chapter III, Water Quality Objectives, Tables III-2A (Section 2 of the Staff Report), should be reviewed (and if appropriate amended) as follows:

a) Replication of DF&G criteria development (toxicity studies) should be performed according to standard scientific principles, and the Specific Pesticide Objectives should be adjusted as deemed appropriate by an independent scientific review panel, following completion of such studies.

b) As the Basin Plan Amendment proposes adoption of the DF&G criteria as site-specific water quality objectives, consideration also should be given to site-specific conditions, including mitigating factors, in the Sacramento River and its major tributaries. A site-specific objectives study should be performed for the major reaches affected by the Basin Plan Amendment, according to procedures contained in USEPA guidance and the State Water Resources Control Board's Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California.

c) The proposed water quality objectives should be revised as appropriate following application of proper legal process in adoption of water quality objectives pursuant to California Water Code sections 13241 and 13242.

We thank you for your consideration of these comments on the proposed Basin Plan Amendment.

Sincerely,

Bill Busath – Supervising Engineer